83-1609

No._____

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IN THE

Supreme Court of the United States

October Term, 1983

EDWARD WILSON,

Petitioner,

vs.

UNITED STATES OF AMERICA.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT (UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, No. 83-1443).

PETITION FOR CERTIORARI

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I. Question Presented

Was not petitioner's fundamental due process of law right to a fair trial violated when, after conviction, he was denied the grant of a new trial when a government informant who had initiated the events that led to the convictions submitted numerous statements indicating that petitioner was in fact not guilty of the charges.

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PETITION FOR CERTIORARI

IV. Opinions in the Court Below

Petitioner Edward Wilson was tried in the District Court for the Eastern District of Pennsylvania before the Honorable Alfred L. Luongo, Chief Judge of the District Court, sitting without a jury. The trial commenced on May 10, 1982 on a four (4) count indictment, each count

charging violation of 21 U.S.C. §841 (a)(1). On May 11, 1982 Chief Judge Luongo adjudicated Mr. Wilson guilty of all charges. On September 17, 1982 Chief Judge Luongo sentenced Mr. Wilson to six (6) years imprisonment and six (6) years special parole on each count, and the sentences were to run concurrently.

Pursuant to an appeal by petitioner, on January 24, 1984 a panel of the United States Court of Appeals for the Third Circuit affirmed, in a Memorandum Opinion Of The Court, petitioner's conviction. The Memorandum Opinion of the Court of Appeals for the Third Circuit is attached hereto as Appendix "A".

V. Jurisdictional Statement

Jurisdiction is conferred by 28 U.S.C. §1254 (1). Petitioner's appeal to the United States Court of Appeals for the Third Circuit was denied by that Court on January 24, 1984. This petition for writ of certiorari is timely filed since it was mailed within sixty (60) days of January 24, 1984.

VI. Constitutional Provision

Fifth Amendment, United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or private property, without due process of law; nor shall private property be taken for public use, without just compensation.

VII. Statement of the Case

The government's evidence consisted almost entirely of circumstantial evidence presented through the testimony of Philadelphia police officer Mark Moger, who was specially assigned to the Drug Enforcement Administration (hereinafter "DEA"). Agent Moger testified that one James Shaw (hereinafter "Shaw"), a federal informant who was working for him and other DEA agents, allegedly arranged purchases of heroin from petitioner. These arrangements were made during telephone conversations between Shaw and the petitioner, and the conversations were all monitored by DEA Agent Paul Boulad at the Philadelphia DEA office (where they had originated, with Shaw as the caller).

The first three counts of the indictment refer to events of September 18, 1981, September 25, 1981, and October 7, 1981. No one testified that they saw petitioner deliver drugs on any of these occasions. Instead, the testimony was circumstantial. Agent Alvin Williams testified that on September 18, 1981 he observed petitioner and Shaw in a car. Petitioner allegedly went to the trunk of the car, withdrew an anti-freeze can, and gave Shaw the bag that had contained the anti-freeze can. Agent Moger met Shaw shortly thereafter, and Shaw was said to be carrying a bag containing heroin.

Agent Moger testified that on September 25, 1981 he and Shaw drove to a shopping mall. Once there Shaw left Moger, entered petitioner's car, and five (5) minutes later returned to Moger's car with heroin. On October 7, 1981 Moger again drove Shaw to the mall, where Shaw again allegedly met with petitioner. Shortly thereafter Shaw put a bag into the trunk of Moger's car. Petitioner then allegedly entered Moger's car and stated his desire to obtain cocaine from Moger.

The fourth count of the indictment related to the events of December 29, 1981. As a result of a telephone conversation between them, Moger met petitioner in a Gino's parking lot. Petitioner was arrested and heroin was found in the trunk of his car.

Petitioner testified that he did not deliver heroin to Shaw. He related that Shaw had asked him to play the part of a drug dealer in order to facilitate certain independent drug transactions Shaw was conducting with a white drug dealer. In return, petitioner was to receive cocaine—either from Shaw or the white drug dealer. On the occasions charged in the first three counts of the indictment, Shaw first spoke with petitioner by unmonitored telephone and arranged the later (unknown to petitioner) monitored telephone calls. In these unmonitored conversations, Shaw would arrange with petitioner a scenario in which petitioner would act and appear to be supplying drugs to Shaw.

On the occasion charged in count four of the indictment, Shaw was incarcerated at the time. By a telephone call from the county prison, Shaw informed petitioner that the white drug dealer would pay his bail if petitioner supplied drugs to him. At first petitioner informed Shaw that Shaw would have to stay in jail because petitioner would not supply any drugs. However, Shaw called repeatedly, and petitioner finally relented because Shaw is his cousin. Shaw then informed petitioner where to get the drugs, what to charge the white drug dealer, and related that the white drug dealer would telephone him. Shortly thereafter the white drug dealer (portrayed by Moger) telephoned petitioner and made the arrangements that culminated in the arrest and the fourth count.

Shaw was a fugitive from justice from the state of Georgia during all of this time. After petitioner's arrest, but before the trial, Shaw had informed petitioner that he (Shaw) would come to court and explain the entire affair. However, five (5) days before trial Shaw was mistakenly released from the Philadelphia County prison, and did not appear at trial on the first day. On the second day, petitioner spoke with Shaw before coming to court, and Shaw informed petitioner that he would appear and testify on petitioner's behalf. However, Shaw did not appear.

Five days after trial Shaw appeared in petitioner's lawyer's office and gave a statement (attached hereto as Appendix "B") which exculpated petitioner. However, when Shaw subsequently appeared before the trial court, and a public defender was appointed to represent him, he invoked his privilege against self incrimination and chose not to testify. Subsequently Shaw wrote to Judge Luongo (a copy of the letter is attached hereto as Appendix "C") and to counsel (a copy of the letter is attached hereto as Appendix "D"). The statement by Shaw in the lawyer's office, as well as the letters, exculpate petitioner (and corroborate petitioner's trial testimony).

VIII. Reasons Relied Upon for the Allowance of the Writ of Certiorari

The instant petition for a writ of certiorari should be granted because this case presents important constitutional questions concerning the due process right to a fair trial where, after trial, a government informant who was the instigator of the activities which resulted in the petitioner's conviction repeatedly communicates with authorities and counsel for the petitioner and relates facts which, if believed, would demonstrate that the petitioner is not guilty of the charges. In such circumstances the interests of justice require that a new trial be granted.

In this case all of the activities for which petitioner was arrested began with the instigation of Shaw. In three of the events in question no one actually saw petitioner commit any crime—the evidence was entirely circumstantial. Shaw would, if allowed, testify that he, and not petitioner, was guilty of the offenses, and that petitioner knew nothing of the actual drug transactions. Instead, all petitioner did was play-act so that Shaw could accomplish the establishment of a certain relationship with someone petitioner thought was a drug dealer. In the fourth event in question, petitioner only acted after pressure from Shaw, and then only as a result of information Shaw gave to petitioner. Shaw wishes to come forward to exonerate petitioner, but was frustrated by lack of counsel, by fear of retaliation by the DEA and the state of Georgia (as a result of his fugitive status), and then by his lack of familiarity with court appointed counsel. Nevertheless, Shaw's persistence in communicating with authorities concerning his desire to exonerate petitioner demonstrates that Shaw should be heard. The trial court's decision not to grant petitioner a

new trial and allow a fact finder to hear all of the evidence—and the Court of Appeals affirmance of that decision—violates petitioner's due process right to have a fair trial.

In *Newson v. United States*, 311 F.2d 75 (5th Cir. 1962), a co-defendant stated (after Newson's conviction) that he had possessed and sold drugs to a third party on the night in question and that Newson had not even known of his activities. The grant of a new trial was based upon the concept that a jury might find the co-defendant's testimony sufficiently credible to raise a reasonable doubt. In this regard the right to a fair trial was carefully protected, and a suggestion was made that other courts also do so by using "... every practicable precaution" ... "to insure that the verdict really spoke the truth". Here, if every practicable precaution were taken, a new trial would be granted so that petitioner's right to a fair trial would be protected. Since petitioner's position in this case is much like Newson's—that someone did something without his knowledge and he was convicted because of those actions—a new trial should be granted here just as in *Newson*.

In *Ledet v. United States*, 297 F.2d 737 (5th Cir. 1962), Ledet was convicted after being a passenger in a car in which a narcotics transaction had occurred. After the trial the non-testifying co-defendant submitted an affidavit stating that Ledet had no knowledge of the transaction. The new trial was grounded upon the concept that the person with the most knowledge of the transaction be given an opportunity to testify. Instantly, where facts are so similar to *Ledet*, a new trial should be granted to insure petitioner's due process right to a fair trial.

In *Mejia v. United States*, 291 F.2d 198 (9th Cir. 1961), Mejia repudiated his earlier admission that he was the getaway driver for a drug deal. He claimed—as petitioner did here at trial—that he had been made to look like a "big shot". In addition, Mejia offered an alibi. The factfinder believed neither of Mejia's assertions, but the new trial was granted after the submission of an affidavit from a witness who, if allowed to testify, would have corroborated Mejia's alibi. Although Shaw would not corroborate an alibi here, since none was offered, Shaw would corroborate petitioner's assertions of play-acting. As in *Mejia*, here a new trial should have been granted to insure petitioner's right to a fair trial.

There are two clear bases upon which a new trial could and should be granted. It is clear that the grant of a new trial is within the discretion of the trial court, *United States v. Ianelli*, 528 F.2d 1290 (3rd Cir. 1976). Moreover, there are few limitations placed upon a trial court when it grants a new trial in the interests of justice, *Benton v. United States*, 188 F.2d 625, 627 (D.C. Cir. 1951). If the testimony that is available from Shaw—but not yet heard—would justify and produce a different verdict, *United States v. Meyers*, 484 F.2d 113 (3rd Cir. 1973), then the trial court would be abusing its discretion by failing to grant a new trial. Here a brief review of cases demonstrates that Shaw's testimony could (and probably would) produce a different verdict. Hence the lower court's denial of a new trial was an abuse of discretion and a violation of petitioner's due process right to a fair trial.

In *United States v. Meyers*, *supra*, the trial court was found to have erred in denying a new trial where (later discovered) evidence demonstrated that the fraudulent checks in question in the case had been endorsed by

someone other than the accused. Since the government had not produced direct evidence that the accused had delivered the fraudulent items, it had failed to exclude the possibility of a third party's activities. Instantly the evidence in the first three counts failed to show that petitioner actually made the alleged drug deliveries to Shaw. Indeed, the evidence suggests that Shaw set up the incidents because he wanted to impress his DEA sponsors in order to avoid returning to Georgia to answer the fugitive charges, and was able to carry out his plan because of his intimate knowledge of his relative's (the petitioner) habits and his ability to convince his relative to play along in a manner that petitioner thought was not unlawful. In each of the first three counts, Shaw could have placed drugs in petitioner's car—and removed them—without petitioner having any knowledge of those actions. Under all of these circumstances, a new trial should have been granted so that petitioner could have presented all of the evidence in a fair trial guaranteed to him by due process of law.

Another basis for the grant of a new trial to insure petitioner's right to a fair trial exists. A new trial may be granted on newly discovered evidence, *United States v. Danzker*, 561 F.2d 485, 486 (3rd Cir. 1977), and the decision to grant such a new trial is within the sound discretion of the court, *United States v. Iannelli*, 528 F.2d 1290, 1292 (3rd Cir. 1976). In order to justify the grant of a new trial on newly discovered evidence, the defendant has the "heavy burden" of proving:

1. the evidence must be newly discovered (i.e.—discovered since the trial)

2. the facts alleged by the defendant must justify the court's inference of diligence on the part of the defendant

3. the evidence must not be merely cumulative or impeaching

4. the evidence must be material to the issues of the case

5. the evidence must be of such nature that it would produce an acquittal at a new trial. *United States v. Ianelli, supra.*

A brief application of the facts of this case to these standards demonstrates that a new trial is justified. First, Shaw's testimony was newly discovered since it was only after Shaw was mistakenly related from custody in Philadelphia that he evidenced a willingness to testify in petitioner's behalf. Second, petitioner was diligent in attempting to obtain Shaw's testimony, and even testified that on the very morning of the second day of trial Shaw had indicated that he would be present later that day to testify. Third, the evidence to be offered by Shaw was the only corroborative testimony that could be offered to support petitioner's testimony. Thus it was neither impeaching nor cumulative. Fourth, it was clearly material to the case. Fifth, despite the lower court's conclusion, the evidence to be offered by Shaw, if believed, could and would produce an acquittal at a new trial. In this regard it should be noted that the lower court cannot state as a matter of law that the Shaw testimony would not so produce a different verdict, and since that cannot be done, petitioner should have a right to have a fair trial and let a jury decide after hearing all of the evidence at one time.

If this Honorable Court does not accept this matter for consideration, the testimony of a government informant who initiated the events in question, produced and directed the events in question, cast the blame upon a relative for his own purposes, and now seeks to correct

the wrong he perpetrated, will be lost forever. Clearly such a loss demonstrates that petitioner's right to a fair trial would similarly be lost. By accepting this case, this Honorable Court can seize an opportunity to resolve thorny questions about how district courts should handle informants' renunciations of the evil they too often perform.

Respectfully submitted,

DANIEL M. PREMINGER, ESQUIRE
Attorney for Petitioner
Edward Wilson

Certification

I, Daniel M. Preminger, Esquire, hereby certify that I am a member in good standing in the bar of the United States Supreme Court having been admitted on April 4, 1983.

DANIEL M. PREMINGER,
DANIEL M. PREMINGER, ESQUIRE

DATED: March 16, 1984

Certification of Service by Mail

I, Daniel M. Preminger, Esquire, hereby certify that copies of the foregoing Petition for Certiorari were mailed by First Class Mail to Rex E. Lee, Solicitor General, Department of Justice, Washington, D.C. 20543.

DANIEL M. PREMINGER
DANIEL M. PREMINGER

APPENDIX "A"

Opinion of the United States Court of Appeals for the Third Circuit

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

For the Third Circuit

No. 83-1443

UNITED STATES OF AMERICA,

vs.

EDWARD WILSON,

Appellant

On Appeal from the United States District Court for the Eastern District of Pennsylvania.

(D.C. Criminal No. 82-00030-1)
District Judge: Hon. Alfred L. Luongo

Submitted Under Third Circuit Rule 12(6)
January 23, 1984
Before: GIBBONS and BECKER, *Circuit Judges*
and ATKINS, *District Judge**

(Opinion Filed: Jan 24 1984)

MEMORANDUM OPINION OF THE COURT

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* Hon. C. Clyde Atkins, United States District Judge for the Southern District of Florida, sitting by designation.

Appendix "A"—Opinion of the United States Court of Appeals for the Third Circuit.

JOHN A. GIBBONS
GIBBONS, *Circuit Judge:*

Edward Wilso appeals from an order denying his motion for a new trial, on the ground of newly discovered evidence, following his conviction, in a non-jury trial, of violating 21 U.S.C. §841(a)(1) (1982). He relies on an affidavit of James Shaw, a government informant who did not testify at the trial, which if credited would tend to exculpate Wilson. When produced at a hearing on the motion for a new trial Shaw asserted the privilege against self-incrimination.

In denying the motion the trial court observed:

> I do not believe that such testimony in light of the recorded telephone conversations and in light of the testimony of the surveillance agents, and in light of all the surrounding circumstances, would have raised a reasonable doubt in any reasonable fact finder's mind.

Supp. App. at 45a. Given this finding which is amply justified by the record, we cannot say that the denial of the motion for a new trial based on newly discovered evidence was an abuse of discretion. *United States v. Iannelli*, 528 F.2d 1290, 1292 (3d Cir. 1976).

The judgment appealed from will be affirmed.

TO THE CLERK OF THE COURT:

Kindly file the foregoing Memorandum Opinion.

JOHN A. GIBBONS
Circuit Judge

APPENDIX "B"

Statement of James Shaw

DANIEL M. PREMINGER, ESQ.

May 17, 1982, it is now 8:45 in the morning. James Shaw, the alleged informant and FBI servant, thank you DEA servant, is said to have purchased drugs from Edward Wilson in September of 1981 and October of 1982, is present herein my office. For the purpose of giving me a tape recorded statement, he informs me at a pre-tape recorded discussion that he did not make any drug purchases from Mr. Wilson and that he wishes to relate what happened and why he made it appear that he had made these purchases from Mr. Wilson. Mr. Shaw when did you start working for DEA?

Around March of 1981.

And what was your reason for starting to work for DEA?

So that I would be able to help them in their purchases of some drugs, and they help me with my open cases that I had and help me get them closed.

And how many people did you investigate for them?

Approximately from anywhere five to eight people.

Now did they give you the assistance that you required?

No.

Why?

Because all the time that I was cooperating with them, I was getting more and more deeply involved with drugs, getting in more and more trouble.

Appendix "B"—Statement of James Shaw.

Did you tell them that?

They knew it.

How do you know that they knew it?

Because they got me out on bail on a couple of cases.

Who was that that got you out on bail?

The DEA.

Who?

Henry Cunningham and Paul Bulack.

How did you know that?

They gave the money to my old lady to come and get me out.

What is her name?

Beatrice Elmore.

Now is there a time that you got involved with Mr. Wilson and the DEA?

What?

Is there a time that you became involved with Mr. Wilson and the DEA?

Yes.

How did that begin?

It begin by me making phone calls to Mr. Wilson.

Why did it begin?

It begin because I needed somebody to play the part—which I say appear to be getting drugs for them but I wasn't getting drugs for them.

Appendix "B"—Statement of James Shaw.

Why did you need someone to play that part?

So that I could come away with all the money that the DEA gave me to purchase the drugs and the money that I was paid.

Did you put this plan together yourself?

Yes.

Tell us how you came about this plan? How you figured it out?

Well a lot of times we went out to make a buy I wasn't searching for—before I went to make a purchase, therefore DEA would give me anybody that they couldn't come in contact with, they would give me the money to go purchase their drugs so that _____. I would go purchase the drugs from some people and come back and give it to them, at which at that time, they thought that I had spent the money with the person that I went to go see. Now as far as Mr. Wilson is concerned, I got dope from a guy on a previous date named Fat Jack. I got it from him on the previous day or that morning that I knew that we was going to do a job with Mr. Wilson.

How did you know that you were going to do a job on a particular day?

Because a lot of times I would call the DEA office and I would talk to Henry Cunningham or Mark Moger and they would ask me, hey do you think that you could do Mr. Wilson tomorrow, they wouldn't say Mr. Wilson, they would say do you think that you could Boobie tomorrow and I say yea I probably could and they say okay you come on down and we set it up for tomorrow and that gives me plenty of time to get my dope from

Fat Jack and either I have it on me or sometime, I afraid I would get caught, I would stash in Boobie's car, they would never know because I use to borrow his car from him sometime.

Would you have any contact with anyone else after you spoke with the DEA and knew that you were going to do something with Boobie the next day?

Yes I had contact with Fat Jack so that I could get the dope.

And where does Fat Jack work?

Where he sells his product at? He don't have a regular job, he sells his product around Fontaine Bar.

And where is that?

17th and Fontaine.

Why didn't you tell the DEA about him?

Because I didn't want to tell him about him because that is the man who I was getting my stuff from at a really cheap price. If I told about him, there would be no way for me to get over on Mr. Wilson or the DEA with all the money, with the majority of it anyway. See I told the DEA

What did you tell the DEA Mr. Shaw?

I told them that I was getting the dope at once price which was $40 or $45 _____ Mr. Wilson which I was getting it for $20 from Fat Jack, they would give me the full price which I said that I was getting it from Mr. Wilson and not only Mr. Wilson but anybody else that we had dealings with, if I said a bundle cost $50.00, then they would give me $50.00 a bundle. If they wanted ten bundles then they would give me $500.

Appendix "B"—Statement of James Shaw.

You also said that you wanted to get over on Mr. Wilson, why did you say that?

I didn't mean it like that.

What did you mean?

Well I just explained it to you.

You just explained to me about the DEA, explain to me now about Mr. Wilson? Come on Mr. Shaw the tape is running?

I already told you, Mr. Wilson never gave me anything.

Right and you weren't really trying to get over on him were you?

No, I wanted to over on the DEA.

So would you talk to anybody else before you made the deal with Boobie in front of the FBI?

No.

Well if you didn't talk to anyone else Mr. Shaw then how was Mr. Wilson know what was going on?

He didn't.

He didn't! Well if he didn't know what was going on then how could he possibly play his role?

I would tell him you know ahead of time to meet me somewhere you know

When would you tell him—where and for what reason?

I would tell him you know a day ahead of time that I wanted to discuss the job with him, somebody wanted us to go do some work for them or something and the

person wanted to meet him, to do some carpentry work for them or I did that on the pretense using him to do some kind of carpentry work for somebody and I wanted him to meet the person.

You mean that Mr. Wilson didn't know that you were supposed to be introducing him to a big drug dealer?

He was suppose to play the part yes, but he didn't know for what reason, I just told him that I wanted him there and to act like he was bringing me something.

Didn't you tell him more than that?

I told him to play the part, you know to act like he was bringing me a package and I already had a package.

Did you tell him why you wanted him to do that?

I told him there was going to be some blowing it after I got rid of the person and I came back, I would meet him somewhere and do some blowing, I was going to get me some dope.

You were going to go somewhere and get some blow?

Right.

Where? Did you tell him?

No I didn't.

Did you suggest to him? Where to go get the blow?

No.

Did you indicate to him that you were going to supply it?

Yes.

Right then and there?

No, later on.

Later on?

Ahem.

You didn't tell him, Mr. Wilson, that you were going to get it from the person that you were allegedly coming with did you?

No.

Now then, on September 15th, you went to the Federal Building?

Yes.

And were you searched?

Not to my knowledge, not that I can remember.

And then did you and Mark Mosier drive somewhere to Broad and Allegheny?

Yes. I wasn't searched at all that day, I remember.

And then you went to Mr. Wilson's car is that right?

Yes.

Do you recall standing in a phone booth and receiving a call?

Yes.

And then you went to your car right?

Right.

Now what happened after you got to the car, tell us about that?

After I got in the car, I told Mr. Wilson

Appendix "B"—Statement of James Shaw.

Did your car move?

Oh yes, yes.

To where?

We went around the corner, we were at Broad and Allegheny and we went around the corner to Park Avenue and Clearfield.

What happened there?

I told Boobie to get a rag out of the trunk.

Why?

That I put in there.

Why?

And then bring it up the front of the seat for me.

Why?

To make it look like he was giving me something.

Go ahead.

And at the same time, he got something out, a Prestone can that I had in the car so that he could do something to his car.

How do you know that?

He just went under the hood of his car, after I told him to do what I asked him to do, he went under the hood of his car for something.

Now why did you think that you wanted him to look like he was giving you something?

Run that by me Mr. Preminger?

Why did you want him to look like he was giving you something?

So it wouldn't look like I had it all the time.

Didn't you leave Mark Mosier back at the other place?

Yes I did.

So then.

But I know it was a back-up team.

Did you tell Mr. Wilson that?

No I didn't tell him that.

Well then how would he know that someone was looking there at Broad and Clearfield or Clearfield and Park Avenue?

He didn't.

He didn't? So even though he couldn't have known that someone was watching, he nevertheless acted out like someone was? Is that right?

Right.

You directed him there?

Right.

You told him where to park?

Right.

So where were the drugs that day Mr. Shaw?

They were in the car.

Where?

Down on the passenger side under the seat.

In what?

In a brown paper bag.

What did you do then?

I got up under the seat when Mr. Wilson was in the trunk I got it from under the seat and then I waited and I got out of the car, and left and went around the corner.

Where did you put the drugs Mr. Shaw?

I kept them in my hand, I didn't conceal them.

And then you went back to DEA and you gave them the statement saying you got it from Mr. Wilson right?

Right.

Why?

So it wouldn't look like, I didn't want them to know that I was doing it because it would blow my thing.

Didn't you think that it might blow Mr. Wilson's thing?

I wasn't concerned about him at the time.

You were only concerned about yourself?

My habit.

Why have you changed your mind?

Because I have been off of drugs now for seven months and I got a clear head and my conscience just won't let me go along—go out seeing somebody else going to jail.

Why didn't you conscience have that kind of feeling last week? When you were suppose to come to court?

It did, it did.

Appendix "B"—Statement of James Shaw.

Oh yea, so why didn't you come to court?

Because I got cold feet as you might say.

It couldn't possibly be because you would have to be talking to a judge could it?

Not really so.

And it couldn't be that if you came into court, you would be arrested on a fugitive warrant could it?

Yea somewhat.

And it couldn't be that the fact that you are sitting here means you can't get arrested because I have no authority to arrest you right?

I don't know.

So you can just walk out of here after giving this statement and disappear again couldn't you?

I could but I am not.

You could.

I am not.

Excuse me?

I am not.

How do we know that?

Because like I said

How do we know that?

Like I said Mr. Preminger it would still be on my conscience.

How do we know that you would care?

That I care this much.

Now you want us to believe that you really going to go through with it, that is what you want us to believe? Tell us about September 25th, Mr. Shaw?

Well you got to help me reflect that time.

I am not helping you reflect the facts on anything.

I don't remember.

I don't remember what happened.

Try the second deal that you think, do you remember that?

I am trying to.

Good you try, I will wait. Now Mr. Shaw we are talking about the second incident which is 25th of September, do you remember that particular incident?

Yes I do.

Good, what do you recall about it, will you tell me?

I recall calling the DEA on the previous day which is the 24th asking them if they had anything that they wanted to do, and they said, why go back and talk to Mr. Cunningham and he said well I wanted to do something with Boobie and I am not sure if Mark Mosher has anything to do with Mark and he said let me find out if Mark has anything to do if he doesn't we will get Boobie and Mr. Wilson tomorrow and I said fine. At that point, I then called Fat Jack and asked if he had anything and he said yes and I said okay I will be getting back with you later on to try to do something else and when I called the DEA back later on that afternoon, they said come into the office on the 25th in the afternoon, they wanted me to call Boobie to see if I

could set up something so he could meet us at Cheltenham Mall in the evening time and I said okay I will try. I had already purchased the dope with Fat Jack that night and I went up to Mr. Wilson's house on the 24th, I asked him if I could use the car, he let me use the car and that is when I planted my dope in there and I knew that we were going to make a buy the next day so I put my dope in the car and I told him that I would meet you here on the 25th and I would call him and I would ask a few questions that I asked him to meet me somewhere. I asked him to do what he did the first time, play like he got something.

So what happened?

So we went up to the mall on that evening of the 25th and Mark Molger gave me the money. I called Mr. Wilson and I told him that there was some more blow in it for him and just to meet me at the Cheltenham Mall with the car and he came up with the car and I got stuck, and I went back to the car and met Mark Molger and gave him the stuff and we went our separate ways. He took me down to 15th and Westmoreland and I got out of the car and was on my way and he told me to come down the office Monday morning so I could write out my report, everybody was going home.

What happened on the day of the incident? Tell me about the incident?

I just told you.

Yes you told me about the placement of the drugs but not sufficiently.

Appendix "B"—Statement of James Shaw.

Okay on the day of the incident, I went downtown to the DEA office and I called Mr. Wilson and told him, I told him the day previous that I was going to give him some blow and I wanted to meet him at the Cheltenham Mall tomorrow evening but I didn't know exactly what time, for him to wait for me, that I was going to give him a call but the next day which was the 25th, but I went down to the DA office, I called Mr. Wilson and I told him that I had—there was some more blow in it for him, that I wanted to meet him at Cheltenham Shopping Center at 4:00 or 5:00, I didn't know exactly what time it was and he said okay and he met me down there and I went to the car and I talked to him for a few minutes and told him that I was going to meet him later on to give him some blow during which time I got stuck from under the seat where I use to put it at.

How did you get it from under the seat without Mr. Wilson seeing?

Because he got out of the car.

To do what?

Take a urinate, and that is when I got it from under the seat.

You went back to the DEA later and made a statement is that right?

Right.

And your statement was that Mr. Wilson sold you this stuff right?

Right.

Now did you still have the money at that time?

Appendix "B"—Statement of James Shaw.

Yes.

Did they search you at that time?

No, I always put the money in my sock, sometime I usually keep it in my pocket.

But when did you get rid of the money?

I never did.

You never did, you never gave it to Fat Albert?

I gave him some of it.

Some of it?

Yea, Fat Jack.

That is Fat Jack, you kept the rest of it?

That is right

Okay, now when you gave the statement about Mr. Wilson to the DEA on that day, didn't you think that

I didn't give a statement that day, I went back that Monday.

The following week?

Right.

You gave that statement, didn't you think hey, you know you are putting Mr. Wilson into some trouble?

I figured you know what I mean, he was getting some blow out of the deal, it wasn't like he wasn't getting nothing, I paid $67.00 for—

Mr. Shaw

Yea.

Where you considering the possibility?

No I wasn't.

You were not? You didn't think that perhaps Mr. Wilson was going to be in trouble from this?

Maybe he would but I wasn't concerned about it.

You weren't concerned about it at all were you. Now tell me about the third incident which was October 7th?

The third incident?

Yes.

Took place at the same place the Cheltenham Mall, and I just did what I did before.

And what did you do?

I went up to Mr. Wilson's house on the day before and I think that day I washed his car.

Yes.

And I asked him did he want his car washed and he said no and I said I am going to wash it anyway, just so that I could get out where he couldn't see me put the dope in the car.

And where did you put it?

It is something like a pocket down on the passenger side.

Now Mr. Shaw if you were doing this all the time, to get over on the side of the federal government, and Mr. Wilson was willing to play the part, why weren't you willing to tell him that you were putting drugs in the car?

Appendix "B"—Statement of James Shaw.

Because all I wanted, the less he knew the better off it would be. The only thing that I wanted to know that he was getting some blow out of it.

Why would he be better off not knowing what you were doing? When he already knew that he was taking a part?

Because I didn't want him to know how much money I was making.

Why?

So I could keep most of it.

Because then you would have to give him some?

I probably would, or I would have to give him more coke than I was giving him.

Is there anything else that you can recall at this time that you haven't told me?

Yes.

What?

That all the time that I was working for the DEA, they always knew that I was an escaped fugitive.

Yes, did they promise you anything about that?

They acted like they didn't know about it but I got arrested one time for a fugitive warrant and an agent Paul Lang and Lieutenant Rimberson came down to the Round House and talked to the DA, and the DA talked to Judge Myer C. Rhodes and Judge Myer C. Rhodes gave me ROR at their request for escape fugitive.

Anything else?

Like I said they got me out on bail a couple of times.

Yes.

And they always lie to me, they never helped me with my cases or nothing and so that is why I decided to give it up, they planned to get over gang with me, it was only right for me to get over on them.

Are you willing to swear to all of this?

Yes.

Well I am going to have this typed up and then you are going to come back and read it and will you then sign it in the presence of a notary?

I most certainly will.

That everything that you said today is true?

Yes sir.

Did anyone force you or threaten you to make these statements?

No they did not.

Has anyone promised you anything or given you anything?

They have not.

Thank you very much. Mr. Shaw you have indicated that there is something that you haven't told us, please go ahead and do that.

When I was arrested, when Mr. Wilson was arrested before he was arrested, I got in touch with the DEA and Mr. Henry Cunningham, Officer Henry Cunningham said to me that if I could hook up, hook up a meet where him and Mr. Wilson could meet, Mr. Wilson would meet Mark Molgor, could Mark Molgor, could I set it up with

Appendix "B"—Statement of James Shaw.

Mr. Wilson could bring Mr. Mark Molger a hundred bundles, well I called Mr. Wilson about two days previous and asked him to put up this _____ a couple of times to get me out on bail and he said no he couldn't do that. So I asked him could he go to Fat Jack for me to pick up a hundred bundles, and that is a white _____ that I know named Mark who was going to come and give him the money could Mark is a friend of mine and when Mark purchases the stuff he was going to help me get out on bail with the money but first he was going to give Mr. Wilson some blow when he came down and purchased the 100 bundles that I asked Mr. Wilson to drop off for me, the 100 bundles that he would get from Fat Jack and they told me, the DEA told me that if I did that, that if I set up something with Mr. Wilson for the last time, they would work on the _____ thing for me, they would get the whole situation resolved for me so if I did it while I was at the detention center, I would be showing good face, this is what Officer Cunningham told me on the phone and they did get me out of the Joy situation and they straightened out my cases that I had in Philadelphia.

So what did you do?

So I asked Mr. Wilson to go to Fat Jack and told him that Boobie was coming to pick up a package for me and I told Boobie to give it to that friend of mine which was Mark Molger and Mark Molger met up somewhere and he didn't know what was in the package, he just gave it to Mark Molger because I asked him to pick it up from Fat Jack for me.

Who didn't know what was in the package?

Mr. Wilson.

How do you know that?

Well from what I understand it was still taped up and concealed

How do you know that?

That is what Fat Jack told me, that is the way he gave it to him.

When did you speak to Fat Jack?

I spoke to him after he gave it to Mr. Wilson to make sure that he gave it to him.

You were in jail weren't you?

Yes, I talked to him on the phone.

How many times did you call Mr. Wilson to make him do that?

About three or four.

What did he say when you first called him?

He said that he wasn't going to do it.

Why did he change his mind?

Because I guess he felt as though he owed me a favor, you know we were hanging out pretty tough together in the street.

You were hanging tough together and getting high together you were getting over on Mr. Wilson?

He didn't know

And what he didn't know, didn't hurt him?

That is right.

Appendix "B"—Statement of James Shaw.

You figured that you could fool people and get away with it and they don't know about it it is okay?

I just didn't think that it would catch up with me like this.

Did you think that it would catch up to Mr. Wilson?

Like I said I wasn't concerned about Mr. Wilson, I was only concerned about me and my habit.

Are you willing to swear to all of this?

Yes I am.

Did anyone force you or threaten you to say this?

Nope.

Thank you.

JAMES SHAW

APPENDIX "C"

Letter from James Shaw to the Honorable Alfred L. Luongo

James Shaw a/k/a Clarence Wright
168 S. Pine St.
Bucks County Prison
Doylestown, Pa. 18901

The Honorable Alfred L. Luongo
The United States District Court
Eastern District of Pennsylvania
16613 United States Courthouse
Independence Mall West
Sixth and Market Sts.
Philadelphia, Pa. 19106

Dear Honorable Alfred L. Luongo:

In response to your reply that I received; I called the Asst. U.S. Attorney Mrs. Joanne A. Epps to ask her to have me brung down to court so I can finally testify to the truth concerning me as an informant for the D.E.A. This testification will clarify not only my Uncle's involvement, but others I've been responsible for sending to prison. Sooner or later I'll have to step forward and tell the truth on how not just me, but other drug addicts, are using the same scheme to help them get rid of cases they have in state court and still be permitted to commit crime and say they are working for the D.E.A. Once arrested the D.E.A. can make provisions to have you released on your own recognizance or sometimes they pay the bail.

In my cases, my girlfriend Beatrice Elmore was given the money by Agent Cunningham and he instructed her to have the bail papers made out in her name. Subsequently, I'd be released from jail with the promise

that I continue to work for them as I promised. The truth is, I never stopped using drugs, but instead of being placed in a Drug Rehabilitation Program to help me, the D.E.A. advocated my drug habit. The court saw the swelling and sores on my hands which became infected from shooting drugs. The D.E.A. was aware of my drug habit and the money I got then plus what I kept when they sent me out to make drug buys, which allowed me to extend my drug habit. First I went to my Uncle, Mr. Wilson, and told him a scheme whereas we could "rip off" of "white boy" for some cocaine providing he pretend to be a big drug dealer. After I agreed to give him some cocaine for his personal use, Mr. Wilson (my Uncle) agreed and this happens in many drug cases whereas a drug addict is used for the informant. Mr. Wilson would know that I would call him or at times I left word with his wife that I called and would call back. When I contacted him, these calls were taped by Paul Boulad. Mr. Wilson was arrested for drugs before and served time in Lewisburg and was on parole, so it was no problem for me to make them believe that Mr. Wilson was giving me the drugs each time I pretended to make a purchase from him I used his car whenever I wanted to because of the help I was to him (i.e.—doing carpentry work). When he was doing carpentry work, I would stash the drugs in his car because I'd always tell the agent he works for that. The dealer charges $50.00 or whatever, and the agent has no way of knowing the price because he's not there and most addicts prefer not to be "wired up" because the conversation would be taped and they would know what the real price is or whether or not he is the real dealer. Once this transaction is made with someone, in reality a bundle of drugs today only cost

$25.00 or $30.00 when you buy alot of bundles but, we say $50.00, the dealer only gets $25.00 but we make out our reports and say $50.00 per bundle. We either hide the money in our socks or leave our shirts open and tape the money to our body or put it in our jockey shorts. It wouldn't fall because the jockey shorts are worn tight. In my case with Mr. Wilson, I would hide it in my socks because the agents knew I'd always enter Mr. Wilson's car, and talk with Mr. Wilson about the "white boy" with the cocaine, get my package from the passenger's side exit Mr. Wilson's car, then later on bring him back cocaine for his use. (All along having him believe that Agent Mark Moger would give him an ounce of cocaine on consignment). Then he would run off with it and I'd pretend I couldn't find him. Mark Moger, the Agent, made my scheme work becuase he and I had given Mr. Wilson cocaine to test, and told him if he liked it this is what Mark Moger would bring back to him from Florida. On one occasion with Mr. Wilson, I never even went to the Federal Building. I called in and we decided to "do" Mr. Wilson because I didn't have any money to obtain drugs for my use and on this occasion I was told to meet Mark Moger at Broad and Allegheny Ave. I had already called Mr. Wilson and told him to tell me where to meet him. When I called back, Agent Mark Moger picked me up at Broad and Allegheny and proceeded with Mr. Wilson. This time I had my drugs on me already. We were never really searched anyway. On occasion with Mr. Wilson, I didn't even go back to the Federal Building because it was on a Friday. I was told by Mark Moger to come in Monday and make out a report. I used drugs all that weekend with my pay and the money I made after I got the drugs from Jack

Appendix "C"—Letter from James Shaw to the Honorable Alfred L. Luongo.

Piston, known as "Fat Jack". On another occasion with Mr. Wilson that took place at Park Ave. and Allegheny I tried to remove the bag from beneath the passengers side of Mr. Wilson's car where I had hid it earlier but the bag tore and I asked Mr. Wilson did he have a paper bag in his trunk. He replied yes; got out of the car, opened his trunk, took out a bag that contained a bottle of anti-freeze, and gave me the bag. This time I had got all the bundles from under the seat, I got out of the car, took the paper bag and went west on Clearfield street putting the bundles in the bag before I got back to the agent. The money the agent gave me was in my sock. That evening I went to the schoolyard, where Mr. Wilson was attending a basketball game. He participates as the director of the league during the summer with the children. I gave Mr. Wilson a gram of cocaine for his use. My scheme was in full operation but I got arrested for possession of drugs or burglary. I really can't remember which case due to the fact that I have several cases, even though I think it was a burglary case because the D.E.A. got me out right away on the possession of drugs. I signed my own bail again and was released after they told the state not to hold me on the fugitive warrant. I had once escaped from the chain gang in Georgia. I got released again promising I would work for them but at a later date I got arrested for burglary. This time they held me on a fugitive warrant. I was placed in the Detention Center where as I had numerous charges on me and a escape charge. I called Agent Cunningham from the Detention Center and asked him to get me out again. Agent Cunningham's reply was he would if I did one more favor for them in good faith. This favor was to set up a buy with Mr. Wilson to Mark Moger. After the

set up, I would be released again. I called Mr. Wilson from the Detention Center and asked him to sell a drill and saw that we had purchased together and leave my half on the books for me because I didn't have money for cigarettes or toothpaste. After he sold the tools he left me $40.00 on the books. Later I called him and asked him to put his home up and get me out on bail. He consulted with his wife and she said no. I became disgusted and then called Mr. Wilson and asked him to do me a favor and pick up a package for me, give to to the "white boy" and return the money to Fat Jack, wherein the "white boy" would get me out on bail and give me some cocaine for doing it again. Mr. Wilson said no, I constantly called Mr. Wilson until he finally agreed to do so. I called Agent Cunningham and I was told to do it and in return I'd be released. I set the deal up with Mr. Wilson to meet Fat Jack and get the package and give it to Mark Moger for $50.00 per bundle. But after Mr. Wilson talked with Fat Jack he quoted the same price Fat Jack gave him to Mark Moger and for this Mark promised to bring him an ounce of cocaine on consignment. The scheme worked because they placed Mr. Wilson under arrest and had removed me from the Detention Center to New York. They never did release me but later had me sent to Montgomery County Prison. I asked them about my release and they said they were working on the Georgia case and in the meantime things were made convenient for me. The Marshalls would come and get me from Montgomery County Prison and bring me to the Federal Building. My girlfriend, Beatrice, would meet me and we would have sex. I'd send her out to obtain my necessities, then she would return back to the Fed. Bldg. Our sexual activities took place right

across from Mrs. Epps' office. I never would talk with Mrs. Epps and I don't think that she knew I was down there. After being confined in Montgomery County Prison for months, I was shipped back to the Detention Center where I went to court on one of my burglary cases but was released by mistake after the Magistrate dismissed it. I then contacted Mr. Wilson and told him about the mistake about my release, he then suggested that I surrender myself to Chuck Stone. This I did after I got cold feet and didn't appear at his trial to tell the court the real truth. I told my story to Chuck Stone and had him to call Georgia for me. This he did and Georgia's reply was when I was ready to come there and just notify them and they would have someone pick me up. But after leaving Mr. Stone's office I went to Attorney Daniel Preminger and told him the truth and that I would appear in court to testify. But affraid because I didn't have legal counsel representation, I took the fifth, hoping that I could obtain counsel. I am without funds and have put my trust in Mr. Miller (public defender) and once in for all, I want to step forward and tell the truth about what men I'm responsible for them receiving charges from the Government. Mrs. Epps hung up the phone on me when I called her to discuss coming back to court and telling the truth. But this scheme is used among many drug addicts in the Detention Center. It is common among drug addicts to discuss plans to work with the D.E.A. with reference to getting released from prison.

Hopefully my letter will allow me to come to court and testify to the real untold truth.

Respectfully,

Clarence Wright
a/k/a James Shaw

APPENDIX "D"

Letter from James Shaw

Received 12/29/83

12/23/83

To Whom if may concern.

I James Shaw a.k.a. James Willis is presently being confined at Costal Correctional Institution in Garden City Georgia . Inmate I.D. Number I Y-29817.

This letter is in regard to my uncle (Edward Wilson) and his cases with the (Drug Enforment Administration) as well as they (U.S. Goverment.) I James Willis a.k.a. James Shaw is not a high school graduate. But is compelled to write this letter too the best of my ability in hopes that I may free my consicience and my uncle whom is a innocent victim of circumstances. Mr. Ed Wilson never at any point or time ever gave me any (drugs or narcotics.) At the of my cooperation with the D.E.A. task force in Philadelphia. I was an escape fugitive from the penal system of Georgia. This was a fact that they agent's new Mr. Paul Boulad Mr. Henry Cunningham and Mr. Mark Moger ect. They were also aware of the fact that I James Shaw was a dependent herion abuser and metamphetamine user also. I made they D.E.A. authoritys aware of my drug problem as well as my local open criminal charges and the fugitive matter pending against me, in short I went too the D.E.A. office in hope's that I could and would

receive some type of help and assistance for my situation with the law and my drug dependence. Only too realize that I was used and abused because of my drug habit even more, I was made all sorts of verbal promises. For exampel I was taken out of prison on bail on at least two or three occasions with bail moneys being delivered too my girlfriend Beatrice Elmore. By was of police officer Mr. Henry Cunningham or officer or agent Mark Moger, my mind was so distorted that it is almost impossible too remember each detail of facts. But after twenty five months of incarceration with a very sound and stabul mental compasity, I find deep down in my soul and heart. That I James Shaw's conscience will not allow him too rest in peace if I would be the main fator in knowing that I sent my uncle whom is a innocent man too prison. I wrote this letter on my on free will in hope that it would help rectify a terrible and sickly mistake. If I am so needed to testify in Court on Mr. Edward Wilson behalf. I would welcome they opportunity of doing so. My address is as follows

James Willis Y-29817
Costal Correctional Institution
P.O. Box 7150
Garden City Ga. 31418

Appendix "D"—Letter from James Shaw.

When I was arrest and finally being held at the Phila. Detention Center under $50.000 dollars bail charged as fugitive of justice. I talked with Mr. Mark Moger (D.E.A.) he informed me that if I could get him some herion that he would or the (D.E.A.) would honor there promise and get me out on bail. I then called my uncle Mr. Ed Wilson and ask if he would assist me on making my bail. I asked him if he would put up his house as collaterral. He said that he would help me, but that he could not put up his house. So I did the next best thing. I ask him if he could go meet my associate Fat Jack and pick up some herion for my white buddy Mark, and it would get me out on bail. Also it would be some cocain in it for hisself. He promised me that he would see Fat Jack and also meet Mark Moger that evening, and I should be out on bail the following day. I set the whole deal up from the telephone at the, Phila. D/C.

Respectfully Submitted

James Shaw
A.K.A.
James Willis

I would admit too this statement in a court of law.

Appendix "D"—Letter from James Shaw.

This letter was printed by myself because I don't consider my hand writing would be legibly written and understood by they proper authority. My signature should be suffient.

Respectfully Submitted

James Shaw
A.K.A.
James Willis